

ILLEGIB

Committee on Armed Forces

93d Congress }
2d Session }

COMMITTEE PRINT

UNAUTHORIZED DISCLOSURES AND
TRANSMITTAL OF CLASSIFIED
DOCUMENTS

REPORT

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE



DECEMBER 19, 1974

Printed for the use of the Committee on Armed Services

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1974

43-386

Specific Check file

COMMITTEE ON ARMED SERVICES

JOHN C. STENNIS, Mississippi, Chairman

STUART SYMINGTON, Missouri
HENRY M. JACKSON, Washington
SAM J. ERVIN, Jr., North Carolina
HOWARD W. CANNON, Nevada
THOMAS J. MCINTYRE, New Hampshire
HARRY F. BYRD, Jr., Virginia
HAROLD E. HUGHES, Iowa
SAM NUNN, Georgia

T. EDWARD BRASWELL, Jr., Chief Counsel and Staff Director
JOHN T. TIGER, Chief Clerk

(II)

STROM THURMOND, South Carolina
JOHN TOWER, Texas
PETER H. DOMINICK, Colorado
BARRY GOLDWATER, Arizona
WILLIAM L. SCOTT, Virginia
ROBERT TAFT, Jr., Ohio

JK 468
S 4 115
1974
COPY 2
SUMMARY

Unauthorized Disclosures to the Press

In December, 1971, the press began disclosing classified information relating to national security matters. The leaks to the press of this highly sensitive information were a serious compromise to national security decision-making. There may have been legal and practical obstacles to any prosecution. But the objectives and shortcomings of the Executive Branch investigation of these leaks precluded the possibility of a successful prosecution. In view of the absence of a firm basis for prosecution, it would serve no useful purpose for the Committee to speculate on who might have been responsible for the leaks to the press.

Unauthorized Transmittal of Classified Documents Between the National Security Council and the Office of the Joint Chiefs of Staff

During the Executive Branch investigation of the national security leaks to the press, it was discovered that a limited number of documents had been surreptitiously obtained from the National Security Council (NSC) by a Liaison Office and transmitted to the Office of the Joint Chiefs of Staff (JCS). The Committee could find no evidence that it was improper or unauthorized for the Chairman, JCS, and hence the Office of the Joint Chiefs of Staff, to have access to the materials provided by the Liaison Office. Access by the Office of the Joint Chiefs of Staff to intra-NSC mail, certain documents designated "EYES ONLY", and various agenda and talking papers for NSC meetings was not inappropriate and was to be expected given the established policy and practice of the NSC system.

The Committee found no evidence that the abuses in obtaining documents by the Liaison Office were a threat to civilian control. The Committee believes these abuses constituted an isolated and exceptional activity and resulted in no direct harm to the national security.

On the other hand, the surreptitious methods used by Yeoman Charles E. Radford to obtain documents from the National Security Council staff—while not legally actionable—were improper and represented a serious breakdown of professional conduct. Admiral Robert O. Welander, who was then in charge of the Liaison Office, must bear the major responsibility for the unauthorized activity by the Liaison Office.

The Committee findings regarding Yeoman Radford and Admiral Welander should be taken into account in the normal military performance evaluation process. The Committee report as a whole will be sent to the Defense Department, the National Security Council and the Justice Department.

Because of its dual role as part of the National Security Council staff and the Office of the Joint Chiefs of Staff, the Liaison Office was an inherently unworkable and inappropriate arrangement. It is the responsibility of executive leadership to ensure that all Defense Liaison operations are performing in a legitimate manner and that concern for security and communications not be allowed to deteriorate into an obsession for secrecy and information-gathering.

INTRODUCTION

In mid-January, 1974, reports first appeared in the press that an Executive Branch investigation in late 1971 and early 1972 of national security leaks had led to the discovery of a covert operation by the Office of the Joint Chiefs of Staff (JCS) to obtain information from the National Security Council (NSC) staff. Due to the seriousness of ensuing charges of "military spying" against the Office of the Joint Chiefs of Staff, the Senate Armed Services Committee undertook an investigation of the entire matter.

The Committee investigation focused on two major issues: the unauthorized disclosures of classified documents to the press and the unauthorized transmittal of classified documents between the NSC staff and the Office of the Joint Chiefs of Staff.

The Committee took sworn testimony in February and March, 1974, from five principal witnesses: Admiral Thomas H. Moorer, Secretary Henry A. Kissinger, Yeoman (YN1) Charles J. Radford, Admiral Robert O. Welander and Mr. J. Fred Buzhardt. The "Buzhardt Report" and certain other Defense Department investigative reports from 1971-1972 have been made available to the Committee. Senators Symington and Goldwater have examined and reported to the Committee on the "Young Report", an investigative report by Mr. David Young to the President. In addition, the Committee counsel has interviewed several other witnesses who were in the Office of the Joint Chiefs of Staff during the latter part of 1971.

In pursuing its investigation, the Committee was confronted with a variety of inherent limitations. The underlying events occurred over two and a half years ago. Hearsay defects, lack of best evidence, privileged material, and inability to authenticate certain documents posed further constraints on the Committee investigation.

It should be emphasized that the Committee did not conduct a full scale criminal investigation. Indeed, the Executive Branch investigation did not result in any criminal prosecution. Rather, the Committee sought to make an informed judgment on the principal issues without necessarily resolving all questions of fact and criminal liability. While it is not clear to what extent the Justice Department has considered this matter, a copy of this report, along with the Committee hearings, is being sent to the Justice Department for whatever further action is deemed appropriate. In addition, a copy of the report is being sent to the Department of Defense and the National Security Council.

This summary report will deal in turn with the issue of the leaks to the press and the unauthorized transmittal of classified documents. It will attempt to state the relevant facts and discuss their significance. To the extent possible and appropriate, conclusions will be offered.

Unauthorized Disclosures to the Press

A. Material Facts

Information from at least 70 highly sensitive, classified documents was disclosed by Mr. Jack Anderson in his newspaper column between December 13, 1971, and February 1, 1972. All but four documents disclosed by Mr. Anderson were dated as of the first two weeks in December, 1971; the latest document disclosed by Mr. Anderson was dated December 15, 1971.

The documents covered a range of subjects—the Indo-Pakistani situation, the military status in Cambodia, Arab guerrilla activity, Na-52 strikes in Laos, etc.—and were from a variety of sources—National Security Council, Joint Chiefs of Staff, Central Intelligence Agency, State Department, U.S. Mission at the United Nations, etc. An Executive Branch investigation of the leaks began December 14, 1971. Based on information volunteered by Admiral Robert O. Anderson, the focus of the investigation became the Liaison Office between the Office of the Chairman, JCS and the NSC staff. During the latter part of 1971, this Liaison Office consisted of Admiral W. J. R. Radford and Chief William R. Sessions, a substitute clerical assistant. This Liaison Office had offices both in the White House (Old Executive Office Building) and the Pentagon. Of the approximately 70 leaked documents, the investigation determined that the three members of the Liaison Office would have had official access in their Pentagon office to all but 18 documents. It was probable but never verified that the three members had official access to the remaining 18 documents through their White House office. Access, both official and otherwise, to the Liaison Office safes in the Pentagon and the White House was severely restricted. It was possible, however, that several people other than those in the Liaison Office could have penetrated the Liaison safes, although there is no evidence that this occurred.

The three members of the Liaison Office, the clerical staff in the Office of the Chairman, JCS, and a Navy yeoman who worked in the Liaison mail room of the NSC staff were examined at length by Defense Department investigators and voluntarily underwent polygraph tests.

Mr. Radford admitted that he was personally acquainted with Mr. Anderson and had dinner with Mr. Anderson on the evening prior to the first unauthorized disclosures by Mr. Anderson. YN1 Radford admitted that he ever gave classified information to Mr. Anderson.

The Executive Branch investigation was to some degree a combined effort by investigators from the White House and the Defense Department. Mr. J. Fred Buzhardt, then General Counsel at the Defense Department, submitted an interim report of the investigation on January 10, 1972, to Defense Secretary Melvin Laird. No subsequent or final Defense report was ever prepared. Presidential Assistant John Ehrlichman headed the investigation for the White House. Mr. David Young compiled a report for the President which was merely a chronological account of Young's activities, observations, and impressions throughout the investigation. The "Young Report" indicated some participation by the then Attorney General in the investigation of this matter.

No prosecutions or disciplinary actions were ever instituted as a result of the investigation. YN1 Radford's access to classified material was administratively terminated on approximately December 16, 1971. The Liaison Office was closed shortly thereafter. YN1 Radford and Admiral W. J. R. Radford were transferred to other assignments.

There were no further disclosures of a similar nature by the press of documents dated later than December 15, 1971.

B. Discussion

The leaks to the press were massive and of serious consequence. Particularly important, leaked minutes of Washington Special Action Group meetings of the National Security Council provided a verbatim depiction of the national security decision process in an on-going crisis situation—the Indo-Pakistani war. Other documents tended to reveal sensitive sources of intelligence information. Still other material disclosed secret information regarding U.S. military movements.

Several conflicts of fact have emerged from the Committee investigation which could not be readily settled. The most substantial conflicts concerned the extent of YN1 Radford's contacts with Mr. Anderson and the access and handling of certain crucial memoranda that were leaked. Moreover, gaps remain regarding the access to various pieces of leaked material.

Had the 1971 investigations been more thorough and systematic or had the Justice Department launched an investigation, it is quite possible that some of these gaps and conflicts could have been resolved. The 1971 investigation, however, never reached the stage of being able to make a legal showing as to who was responsible for the leaks to the press. The investigators used methods, such as polygraph examinations, which would probably not have been admissible in a court of law. Furthermore, there was some indication that there may have been legal defects in the treatment of various witnesses by investigators. At the same time it should be pointed out that the first objective of the investigation was not to lay the foundation for a criminal conviction but rather to stop the leaks. In this regard the investigation was notably successful.

As to the secondary objective of prosecuting and convicting the party (or parties) responsible for the leaks, the 1971 investigation was unsuccessful despite a wealth of relevant evidence. In his testimony before the Committee, Mr. Buzhardt made a presentation as to why no prosecution was undertaken in this matter. The evidence at hand was all circumstantial. Jurisdictional and procedural issues associated with a prosecution could have required further disclosures of important classified information. There was felt to be a danger that prosecution itself could prompt more critical disclosures. Lastly, any prosecution under the Espionage Act would have required meeting severe elements of proof and overcoming difficult questions on the constitutionality of the Espionage Act as applied in this case. For these reasons, prosecution was deemed inadvisable.

C. Conclusions

The leaks to the press represent a serious compromise to national security decision-making. The Committee believes that the lack of

prosecution for whatever reasons of such a serious compromise—while rationalized—is deeply regrettable.

The Committee must note that there were weaknesses in the 1971 investigation of the leaks to the press. The distinct lack of coordination between the White House and Defense investigators and the disruption caused by the revelations about the unauthorized transmittal of classified documents between the Office of the Joint Chiefs of Staff and the National Security Council contributed to the incompleteness of the investigation of the leaks. Although the legal obstacles of the Espionage Act cannot be denied, a more rigorous and professional investigation at the White House level or an investigation by the Justice Department with regard to the news leaks might well have led to the achievement of a successful prosecution without further compromising national security.

In view of the incompleteness of the 1971 investigation and the actions on its own investigation, the Committee would serve no useful purpose by trying to comment officially on who might have been responsible for the leaks to the press. The protection of individual rights and the inevitable danger of summary conclusions weigh against the Committee rendering a judgment as to culpability for the leaks.

Unauthorized Transmittal of Classified Documents Between the National Security Council and the Office of the Joint Chiefs of Staff

4. Material Facts

A Liaison Office existed between the Office of the Chairman, JCS, and the NSC staff. The unstated purpose of the Liaison Office was to expedite the flow of informal correspondence and information between the Office of the Chairman, JCS and the National Security Council.

The Liaison Office was composed of an officer of flag rank and a clerical assistant. The flag officer served simultaneously on the staff of the Chairman, JCS and as a senior member of the NSC staff.

YNI Radford reported for duty as a clerical assistant with the Liaison Office in September, 1970. He served under the command of Admiral Rembrandt Robinson. On June 1, 1971, Admiral Welander replaced Admiral Robinson, who is now deceased.

In the course of the 1971 investigation of the leaks to the press, YNI Radford admitted using surreptitious methods to obtain information from the NSC staff. When ostensibly serving as a messenger for the NSC staff, YNI Radford would covertly make copies of intra-office mail or show pieces of intra-office mail to Admiral Welander. Admiral Welander would not otherwise have seen these documents. Other documents marked with such designations as "EYES ONLY" or "NODIS" (No Distribution) were transmitted from the NSC staff through the Liaison Office to the Office of the Joint Chiefs of Staff. No specific determination could be made as to the number or identification of these documents. Furthermore, copies of agendas or talking papers for various NSC meetings were obtained by the Liaison Office, often "sanitized," and delivered to the Office of the Chairman, JCS prior to the NSC meeting.

On trips with Mr. Kissinger in July, 1971, and General Alexander Haig in September, 1971, YNI Radford surreptitiously collected classified information and obtained copies of an assortment of classified documents which he subsequently provided to Admiral Welander. Admiral Welander knew that YNI Radford had obtained at least a portion of such documents on the Kissinger trip from a "burn bag." Admiral Welander provided copies of some of the documents from both trips to Admiral Moorer.

YNI Radford was never ordered or specifically instructed by his superiors to obtain documents in a clandestine or irregular manner. Nor was he ever forbidden or discouraged from obtaining documents in an irregular manner.

No disciplinary action was ever taken against any individual with regard to the surreptitious obtaining of documents.

B. Discussion

(1) *Access of the Joint Chiefs of Staff to Materials from the National Security Council Staff.*—The exchange of information between the National Security Council and the Office of the Joint Chiefs of Staff through all forms of communications was extensive. Despite the vagueness of definition and purpose for the Liaison Office, its general mission was to facilitate the exchange of information between the National Security Council and the Office of the Joint Chiefs of Staff. Secretary Kissinger emphasized before the Committee, "It was generally understood that the Liaison offices would keep each other informed of what was going on in the staffs which they represented in order to expedite the [NSC] meetings and make sure that the real points of view were represented."

During the Committee's investigation, it was variously alleged that the Liaison Office and hence the Office of the Joint Chiefs of Staff was not authorized to receive certain information that came into its possession. Upon close examination, these allegations could not be sustained.

As a senior official member of the NSC staff, Admiral Welander had authorized access to the intra-office mail of the NSC staff. There was no specific evidence that Admiral Welander acquired NSC mail that he was not otherwise entitled to see.

It could not be established that transmittal of certain documents marked "EYES ONLY," "NODIS" or "LIMDIS" (Limited Distribution) was per se improper. "EYES ONLY" and related designations represent a category for the handling of classified materials and do not literally mean that no one other than the addressee of the document may legitimately see it. It is a common and correct practice that "EYES ONLY" documents are distributed to many individuals after receipt by the addressee.

Similarly there was nothing necessarily improper about "sanitizing" documents, that is eliminating certain identifying or extraneous marks on a document. The nature and extent of sanitizing by the Liaison Office was unclear. Nevertheless, it is not an unusual bureaucratic practice that in order to facilitate the informal exchange of ideas at the working level, documents will be altered to avoid the implications of a formal transmittal.

Finally, given the comprehensive exchange of information in practice between the Office of the Joint Chiefs of Staff and the National Security Council and the general understanding of the broad purpose of the Liaison Office to expedite the flow of information, the transmittal of agenda and taking papers prior to an NSC meeting was to be expected.

The materials that YN1 Radford brought back from his trips with Mr. Kissinger and General Haig, however, are distinguishable from the other information which was provided to the Office of the Joint Chiefs of Staff through the Liaison Office. Some of the materials from these trips were of an extraordinarily sensitive nature and, unlike NSC mail, "YES ONLY" documents and agendas, were of the type that would be purposefully withheld from elements of the bureaucracy such as the Office of the Joint Chiefs of Staff. Nevertheless, Admiral Moorer had been thoroughly briefed as to the substance of these materials and could not have learned anything of significance from them. In virtue of these prior briefings and his indispensability to the subject matter, Admiral Moorer was effectively authorized to see these materials.

Direct access and a full exchange of information between the National Security Council and the Office of the Joint Chiefs of Staff was based on the desire of Mr. Kissinger, and presumably the President, to avoid any interference with the statutory role of the Joint Chiefs of Staff as the principal military advisors to the President and the National Security Council. Despite any reservations of the Secretary of Defense, the direct access between the National Security Council and the Joint Chiefs of Staff afforded by the Liaison Office was a result of civilian decision-making. If transmittal of documents through the Liaison Office provided a tactical advantage to the Office of the Joint Chiefs of Staff in its bureaucratic dealings, it was the result of deliberate policy at the highest levels of the Executive Branch.

In short, the fact that the Office of the Joint Chiefs of Staff had access to the materials transmitted through the Liaison Office was neither sinister nor improper. Rather it was the methods used by the Liaison Office to acquire such material that raise disturbing questions.

(2) *The Surreptitious Methods Used by the Liaison Office to Obtain Information.*—Throughout the testimony, staff interviews and investigative reports, there are a variety of contradictions and inconsistencies relating to the surreptitious obtaining of documents by the Liaison Office. The precise instructions given to YN1 Radford regarding the obtaining of documents, the context and import of congratulations or encouragement given to YN1 Radford, and the extent and content of NSC documents improperly obtained by YN1 Radford were all controverted. Much of the testimony, in particular that of YN1 Radford and Admiral Welander, was in direct conflict on these matters. These conflicting statements proved to be irreconcilable because they could not be independently verified by the Committee.

Based on the evidence as a whole, it would appear that a small number of documents were seized under false pretext from the NSC mail system, highly sensitive materials were secretly confiscated from a burn bag and extracted from Mr. Kissinger's briefcase during his

July, 1971, trip and highly sensitive documents were clandestinely appropriated from General Haig on his September, 1971, trip, all by YN1 Radford.

In these few instances of surreptitious activity, it does not appear that the contents of any classified documents were compromised from a national security point of view. Moreover, no documents were ever stolen. Instead documents were merely scrutinized or copied. Hence it is doubtful that there were any criminal violations associated with this transmittal of documents to the Office of the Chairman, JCS.

It is clear however that the Liaison Office exceeded its authority in surreptitiously obtaining documents and information, even though Admiral Moorer would have been entitled to see any of the information had he requested it. While not necessarily violating any statutory or administrative provisions, this surreptitious activity was a serious, unprofessional abuse of expected standards of conduct.

(3) *The Actions of YN1 Radford, Admiral Welander, and Admiral Moorer.*—No evidence was presented to the Committee to suggest that anyone other than YN1 Radford ever obtained materials from the NSC staff in a surreptitious or unauthorized manner. Likewise, there was no evidence that anyone assisted YN1 Radford in purloining information.

From the facts, it is unclear why YN1 Radford was using unauthorized methods to obtain materials from the NSC staff and whether he was acting on his own initiative.

YN1 Radford's behavior in surreptitiously obtaining materials did constitute a serious breakdown in professional conduct and one which should not be tolerated. His behavior was particularly troubling given his extremely sensitive position relative to national policy-making and security.

Admiral Welander never ordered or instructed YN1 Radford to surreptitiously obtain materials from the NSC staff. Indeed there is no firm evidence that Admiral Welander did anything to prompt YN1 Radford to obtain surreptitiously sensitive materials. However, Admiral Welander admitted that he knew YN1 Radford had obtained materials from the NSC staff which the Liaison Office would not normally have seen. In addition Admiral Welander knew that on the trip with Mr. Kissinger, YN1 Radford had obtained highly sensitive documents from the "burn bag," that is from materials segregated for official destruction. With such knowledge Admiral Welander should have acted to put an immediate halt to YN1 Radford's covert information-gathering.

To be sure, there were mitigating circumstances surrounding Admiral Welander's actions. Admiral Welander took over an on-going, ill-defined operation and had been in his assignment only about a month when YN1 Radford went on the Kissinger trip. This covertly gathered material from both the Haig and Kissinger trips contained virtually no new information for Admiral Moorer and would have been available to Admiral Moorer had he officially requested it. Finally, Admiral Welander, on his own initiative, insisted and cooperated fully with the investigation of the Liaison Office which led to the discovery of unauthorized information-gathering.

Nevertheless, Admiral Welander had a positive duty to explore the facts surrounding YN1 Radford's irregular gathering of documents. Instead he never pursued the matter, never refused materials from YN1 Radford, and never discouraged YN1 Radford in any way. On the contrary, Admiral Welander utilized the material he received from YN1 Radford and forwarded part of the material from YN1 Radford's two trips to Admiral Moorer.

In contrast to Admiral Moorer, the Committee could find no firm evidence that Admiral Moorer knew anything about the clandestine methods YN1 Radford used to obtain information. The only materials which Admiral Moorer received which had in fact been surreptitiously obtained were portions of YN1 Radford's materials from the Kissinger and Haig trips. In light of the vast amount of information that daily flowed to him and the fact that he was already familiar with the substance of the materials, Admiral Moorer had no basis to suspect wrongdoing in the acquiring of these trip materials.

C. Conclusions

Given their full and unrestricted participation in the NSC system, the Joint Chiefs of Staff had no reason to obtain information through irregular means. Taken as a whole, the evidence is insufficient to support the contention that there was an extensive or systematic operation by the Office of the Joint Chiefs of Staff to obtain improperly information from the NSC staff.

There was nothing unauthorized or improper about the Chairman, JCS, and hence the Office of the Joint Chiefs of Staff, having access to the materials provided by the Liaison Office. Civilian control of the national security process was never threatened. There were no breaches in national security associated with the obtaining or transmittal of documents by the Liaison Office. Indeed, the Committee is satisfied that the surreptitious obtaining of information by the Liaison Office was an isolated and exceptional activity.

YN1 Radford's surreptitious activities in obtaining information were an unjustifiable breakdown in professional conduct.

Regardless of YN1 Radford's culpability, however, Admiral Welander, as the officer in charge of the Liaison Office, must bear the major responsibility for the unauthorized transmittal of information from the NSC staff to the Office of the Joint Chiefs of Staff. The forwarding of highly sensitive materials known to have been obtained in an irregular manner and the failure to rectify and prevent surreptitious information-gathering cause the Committee to conclude that Admiral Welander must be deemed a cognizant participant in the unauthorized transfers.

The Committee would urge that its findings be taken into account in the Defense Department's normal performance evaluation of YN1 Radford and Admiral Welander.

Admiral Moorer had no contemporaneous knowledge or direct involvement with the unauthorized transmittal of documents. The Committee determined that Admiral Moorer did nothing improper in connection with the entire episode.

The experience of the Liaison Office highlighted the inadequacies of its organizational arrangement. The lack of a clearly defined purpose combined with the necessity for Admiral Welander to serve simultaneously on two separate staffs—the staff of Joint Chiefs of Staff and the National Security Council—made for an exceedingly difficult context in which the Liaison Office had to operate. The Committee feels that the arrangement, especially as the interface between two such crucial organizations, was inappropriate and was rightly abolished.

There are presently a variety of liaison organizations within the Department of Defense. The military and civilian leadership in the Defense Department must ensure that these liaison organizations are realistically structured and that their legitimate purpose is fully understood by all.

The Committee had no evidence of a direct link between the unauthorized transmittals and the leaks to Mr. Anderson. Nevertheless, it should be emphasized that such surreptitious activity inhibits overall effectiveness by undermining relationships of trust and cooperation. More importantly the corrosive impact of such surreptitious activities created an atmosphere which was conducive to leaks and other security violations. It is the responsibility of executive leadership that concern for security and communication not be allowed to deteriorate into an obsession for secrecy and information-gathering, much less contribute to an atmosphere that makes leaks far more probable.

American War Association
July 1983

"Positive Vetting"—A Review

By Your Editor

The United States and Great Britain have had a fruitful (and sometimes fretful) intelligence exchange program for many years. It bore its greatest and sweetest fruit during World War II with the ULTRA exchanges between British and American code breaking organizations. Historians in earlier books reviewed in this *Intelligence Report* leave little doubt that the war was shortened by reason of intelligence operations and coordination between the two nations. The foes during World War II were the Nazis and the Japanese. The Russians were our allies. And when that relationship ceased in the immediate post-war years, a whole new reorientation of intelligence exchange, with sometimes painful results, began.

Perhaps the best description of the triumphs and tragedies of the new cooperation in the field of decryption, formalized in the UKUSA Agreement, is contained in the recently published book *The Circus* by Nigel West (Stein and Day, New York, \$16.95).

There are two editions of *The Circus*, one American (which will be reviewed here) and one British—and thereby hangs a tale. When MI5 (British Security Service) learned that a book entitled *A Matter of Trust—MI5 Operations 1945-1972* was about to be published, a copy of the manuscript was purportedly stolen by a senior MI5 officer (according to the author) and an order was sought (and granted) in the High Court of Justice, Queen's Bench Division, enjoining publication—all without prior notice to the author or his publisher.

It developed that a copy of the manuscript had been hand carried to the United States by the publisher a month prior to the issuance of the injunction and thus was beyond reach of the British court. Intensive negotiations then took place between MI5 and the author, which resulted in certain deletions from the version to be published in Britain. Upon agreement, the court order was discharged and the English edition came out. But the American edition is relatively unpurgated, except for certain name omissions in the MI5 Organizational Charts in the frontispiece. Whether or not all the allegations of the author and publisher are true, it's great "hype" for the book!

The Circus has much to say about the ineffectiveness of the so-called "positive vetting" system which is supposed to root out security risks in what we in America would call sensitive and critically sensitive positions. In English parlance, positive vetting means "to subject to expert appraisal" but, in practice, as explained in our June issue in the review by Lord Bridge and colleagues of the Prime case, the vetting procedure was neither positive nor effective. Again, our June issue sets forth the recommendations of the Lord Bridge Report to the Prime Minister and the Parliament for improvement of

the positive vetting system. They are, for the most part, patterned after procedures followed by our CIA and NSA. As the report puts it: "The most important conclusions we have reached in this inquiry have, we readily acknowledge, resulted from the visit of members of the Commission to Washington and the direct experience gained from this visit of the personnel security procedures adopted by the United States intelligence and security agencies."

Perfect as our intelligence security procedures may now be, it has not always been so. As *The Circus* points out (p. 181) we had our own defections from NSA in 1960 of the two homosexual cryptologists (Martin and Mitchell) followed by Victor Hamilton and Cornelius Drummond, and the suicide of Jack Dunlap. *The Circus* concludes: "Perhaps most embarrassing of all, the NSA's Director of Personnel, Maurice Klein, was found to have falsified his own original NSA application form and the NSA Director of Security, a former FBI agent, S. Wesley Reynolds, admitted having discovered Klein's secret without taking action. Both men resigned, and were followed by 26 other NSA officials who were later described as 'sexual deviates.'"

There's an old saying to which the British are apt to relate when overly criticized about the Prime case and it is, "People who live in glass houses shouldn't throw stones." Maybe our glass house has been rendered impenetrable by reason of past break outs. If so, the British should be given the formula! As the Security Commission Report (Lord Bridge) put it: "We have felt it essential to subject to fresh and rigorous examination those security procedures, in particular, which affect the most secret agencies and especially to consider what lessons can be learnt by a comparison of the relevant procedures adopted in this country and the United States, with a full appreciation of the importance to the continued cooperation of the two countries in the intelligence field that our security procedures should, so far as practicable, be made as effective as theirs to protect our common secrets." (Emphasis added.)

And there you have it. If our shared secrets are to be protected, both sides must work together to devise the best procedures possible to protect the whole intelligence community against infiltration of communist moles. Just one mole, as in the case of Prime, who gave away British and American signals intelligence for some 13 years, can do incalculable damage. In fact, one mole can go far toward losing a whole war (not to mention thousands of lives) as Roy Medvedev has pointed out in a recent article in *The Washington Post* (June 19, 1983) about the defector Donald Maclean.

Think back to General MacArthur's great Inchon landing which put the troops of Kim Il Sung in a hopelessly cut off position. As our troops advanced north toward the Yalu River and an almost complete victory, President Truman sent a dispatch to MacArthur order-

Continued on page 4

"Positive Vetting"

Continued from page 3

ing him not to cross the Chinese border under any circumstances, and not to use atomic weapons (so relates Medvedev).

At the time Clement Attlee was Prime Minister and was visiting this country with the head of the American desk of the British Foreign Office, one Donald Maclean—a Soviet mole. Stalin had been bringing pressure on Mao Tse-tung to intervene, but Mao did not want the war to spread into China. But, when Maclean passed the Truman order to MacArthur to Stalin, and Stalin relayed it to Mao, the Chinese invaded North Korea en masse and the result was today's stalemate. Thus, can one mole, says Medvedev, alter the whole course of battle.

This brings us to the deficiencies in our own "vetting" or *Screening Federal Employees*, published by The Heritage Foundation and researched and written by this publication's Associate Editor David Martin. While we have pardonable pride in David Martin's work, it would be better to describe the worth of his pamphlet in the words of the nationally syndicated columnist John Chamberlain. Of David Martin and his work he said:

He probably knows more about the ins and outs of subversive infiltration of government than anyone else in the country. So when he says our government has been open to the placement of communist "moles" ever since the FBI was forbidden, under the so-called Levi guidelines, to conduct "full" domestic surveillance of radical organizations, his voice should be heard.

Well, David Martin's voice has been heard. The Levi guidelines are gone to be replaced by the William French Smith guidelines (see our April issue) and a series of recommendations in the "quick fix" area are in the process of at least partial implementation. David made 11 of them and they are reproduced below:

1. The lax 1975 suitability guidelines for adjudicators, currently in use by OPM, should be completely rewritten.
2. The directives promulgated by the chairman of the Civil Service Commission or the chief counsel of the CSC going back to 1965 should be reexamined with a view to eliminating or rewriting all those weakening directives not absolutely required by law.
3. The entire body of Supreme Court rulings relating to federal employment should be reexamined with a view to replacing the extremely constrictive interpretations, passively accepted for some two decades now, with viable, more conservative interpretations.
4. The quality of investigation and adjudication should be improved by funding more inten-

sive training courses, plus refresher courses, for investigators and adjudicators.

5. There should be a tightening up on the waiver of the pre-employment Background Investigation (BI), which has now become the rule in most agencies.

6. There should be a firm return to the requirement for a reinvestigation at five-year intervals of all employees in sensitive—or at the very least, critical-sensitive—positions.

7. Adequate funding must be provided for the manpower requirements that would be made necessary by such improvements. This will need a budgetary assist from Congress.

8. DOD should, at the earliest possible date, abandon the IBI and return to the requirement of a full field Background Investigation for all those with access to Top Secret or higher classifications.

9. Some formula must be found for recasting the "nexus" provision so that agencies are not placed in the ridiculous position of having to hire employees whom they have many valid reasons for not hiring, but about whose flaws and weaknesses they cannot provide a definite nexus to ability to perform the job.

10. The OPM and the Justice Department must team up to represent the interests of the Federal Employee Security Program before the courts far more vigorously and effectively than heretofore.

11. A new executive order should be issued, making it clear that it is the intention of the Administration to maintain an effective program to ensure that applicants for employment in sensitive government positions possess the qualities of integrity and unswerving loyalty to the United States.

David would be the last person to suggest that all the changes that have come about since the publication of his pamphlet flowed directly from his recommendations. But there is no doubt in your editor's mind that they have had, and will continue to have, considerable impact.

The Circus and *Screening Federal Employees* disclose vital weaknesses in the vetting procedures in England and the United States. In our country the data base, which David calls our "priceless reservoir of domestic security intelligence" at state and local levels, has for the most part been destroyed or locked up. It will take five to ten years to build again and require certain legislative changes in the FOIA and Privacy Act to render it inviolate. At least here, the British are ahead of us. As pointed out in *The Circus*, the so-called "Registry" in the A section of MI5 is intact and even more valuable today, since it's been automated, than it proved to be in World War II.

We both have faults and cracks in our "vetting" procedures—we in the federal government generally (outside NSA, the CIA and the FBI) and the British across the board. *The Circus* is an utterly fascinating "case study" of the post-war successes and failures of MI5 in rooting out moles, and David Martin's study a resource book to build improvements into our own security procedures.

Copies of Screening Federal Employees may be obtained from The Heritage Foundation, 513 C Street NE, Washington, D.C. 20002, \$3.00 each.

Senate Hearings on FOIA Amendment

Continued from page 2

Information Act and that the president be authorized to designate other intelligence components as similarly exempt. Such a total exemption leaves available to Americans their rights under the Privacy Act to inquire about files maintained concerning them. Also, historians and scholars (citizens and permanent resident aliens) may request mandatory review for declassification of documents under the provisions of Executive Order 12356.

In view of our understanding of administration and CIA support of S. 1324 we do not oppose its approval, but we strongly urge that the other entities of the intelligence community be accorded similar treatment as is CIA.

Among the other points made by General Larkin were the following:

—The time limits for intelligence agencies to respond to requests, which, when not met, convey the authority to file suit, have been demonstrated to be unrealistic and should not be in the law.

—The provision for *de novo* review by the judiciary, added in the 1974 amendments to FOIA, was vetoed by President Ford as being unconstitutional. A judge who simply disagrees with the experience and expertise of the Executive branch as to what is classified is authorized to release such information. This provision is in our view a usurpation of the intelligence responsibility constitutionally vested in the president.

Mark H. Lynch, The American Civil Liberties Union

The ACLU regards the FOIA as one of the most important pieces of legislation ever enacted by Congress because the Act positively implements the principle, protected by the first amendment, that this nation is committed to informed, robust debate on matters of public importance. Accordingly, the ACLU is extremely wary of all proposals to limit the FOIA....

The assumptions about the Agency's filing system on which this bill rests must be examined and substantiated by the committee....

By making all gathered intelligence accessible, this bill is a significant improvement over past proposals which would have made only finished intelligence reports,

such as national intelligence estimates, accessible. This is an important development, because finished intelligence may omit raw information that is important to understanding events....

Only the operational files of the CIA's Directorate of Operations, Directorate of Science and Technology, and Office of Security will be eligible for exemption from search and review. Thus, operational information located elsewhere in the Agency will be subject to search and review....

Another issue which requires clarification is judicial review. Indeed, the CIA's testimony last week on this matter was quite disturbing. We believe that it is essential for courts to have the authority to conduct *de novo* review whenever a question is raised as to whether a non-operational file has been improperly characterized as an operational file. Without this check, the public will not have sufficient confidence that the Agency has not succumbed to the temptation to broaden the designation of files beyond the definitions established by the bill....

If this bill will not result in the loss of information now available under the FOIA, if it will result in improved processing of requests, and if the other problems I have identified, as well as any other legitimate problems which may be identified by others, are resolved, the ACLU will support this bill.

Steven Dornfeld, National President, Society of Professional Journalists, Sigma Delta Chi

As the chairman knows, journalists in this city do not need official governmental sources of information when there are always plenty of people ready and willing to leak unofficial information. (Why, sometimes, those folks even dispense classified information in pursuit of political advantage.) Thus, the Society of Professional Journalists comes here today not so much on its members' behalf, as on the public's behalf. It is, after all, the public that truly benefits from access to the sheer authenticity of official government records as opposed to people's interpretations of those records....

Last week's public testimony by the CIA suggests that the Agency seeks this legislation in order to alleviate its administrative work and enhance its internal security. To the extent that this proposed bill merely alleviates administrative burden without decreasing the kind of information presently available under the FOIA, the Society does not oppose the bill. To the extent that the CIA harbors deeper aspirations for this bill we oppose it since the case for a broader exemption from the Act has simply not been made.

Our position here today should explode the myth that the press always opposes the CIA's legislative requests. Obviously, while trying to approach this bill reasonably, the Society still has reservations about its effects....all our questions come in the context of the

Continued on page 6